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## SIM CHOO THIAM v. PP

HIGH COURT MALAYA, KUALA LUMPUR
MUNIANDY KANNYAPPAN J
[CRIMINAL APPLICATION NO: WA-44-94-10-2023]
10 FEBRUARY 2025

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**Abstract** – *Favourable facts are relevant, necessary and desirable to assist an accused on the following: (i) to prepare his defence adequately and advance it during the trial, if it progresses; (ii) for him to negate or refute the preferred charges; (iii) to prove his innocence at the trial; (iv) the exculpatory statements made by him and supplied to him pre-trial would prove early disclosure of his defence to the prosecution, in sync with s. 53(3) of the Malaysian Anti-Corruption Commission Act 2009, thus to avoid any adverse inference drawn against him.*

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***CRIMINAL PROCEDURE:*** *Revision – Decision – Criminal revision against decision of Sessions Court – Applicant charged in Sessions Court for offences of corruption under s. 16(a)(B) of Malaysian Anti-Corruption Commission Act 2009 – Applicant served with written statement of facts favourable to defence of applicant signed – Written statement of facts furnished merely stated 'tiada yang diketahui' – Applicant sought order of pre-trial disclosure in Sessions Court for prosecution to deliver fresh written statement of facts – Application dismissed by Sessions Court – Whether order ought to be granted – Whether application justified in law – Criminal Procedure Code, s. 323(1) – Courts of Judicature Act 1964, s. 35*

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***WORDS & PHRASES:*** *'favourable facts' – Criminal Procedure Code, s. 51A & 51A(1)(c) – Pre-trial disclosure – 'Include facts which could be utilised by accused to refute, negate and defend himself against the preferred charges by prosecution'*

The accused/applicant was charged in the Sessions Court for offences of corruption, pursuant to s. 16(a)(B) of the Malaysian Anti-Corruption Commission Act 2009 ('MACC Act'). Pursuant to s. 51A of the Criminal Procedure Code ('CPC'), the applicant was served with copies of the following documents: (i) cautioned statement recorded by the Malaysian Anti-Corruption Commission ('MACC'); (ii) further cautioned statement recorded by the MACC; and (iii) a written statement of facts favourable to the defence of the applicant signed by the prosecuting officer of the MACC. In the written statement of facts furnished, it was merely stated 'tiada yang diketahui'. It showed that the MACC was unaware or did not know of any facts which were favourable to the defence of the applicant pertaining to the four preferred charges against him. Ensuing from that, the applicant had written to the MACC to reconsider its position on pre-trial disclosure of favourable facts. The applicant contended that there were indeed such facts

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favouring his defence within the knowledge of the MACC. The applicant then applied in the Sessions Court for an order of pre-trial disclosure for the respondent to deliver him a fresh written statement of facts. An order was also sought for trial of the case to be stayed pending delivery of a written statement of favourable facts favouring the defence of the applicant. The Sessions Court Judge ('SCJ') dismissed the application. Hence, the present application by the applicant for criminal revision against the decision of the SCJ.

**Held (allowing application; ordering prosecution to comply with s. 51A(1)(c) of Criminal Procedure Code):**

**(1)** The entitlement of the accused to the favourable facts, as essayed by him in his cautioned statements to exculpate criminal liability, was fortified by s. 53(3) of the MACC Act. The exculpatory contents of cautioned statements of the accused were within the knowledge of the respondent amounting to facts favouring his defence against the accusations of corruption levelled against him in the preferred charges. To now say 'tiada yang diketahui' was unwarranted. A further fortification in law which synced with the supply of favourable facts to the accused pre-trial was found in s. 62 of the MACC Act. Therefore, for an offence of corruption, like in the present case, a statement of favourable facts, if delivered, would automatically assist the accused to comply with s. 62 of the MACC Act in order for him to provide an early disclosure of his line of defence to the prosecution before the commencement of trial so as not to be faulted for belated disclosure of his defence, rendering it to be an afterthought or a recent invention. (paras 41 & 42)

**(2)** As the law did not forbid, the applicant's espousal of his claim for favourable facts could not be denied so as to guarantee a fair trial as well as he would be forearmed with his defence to the charges against him, which ranged from the mode and manner by which the prosecution had preferred the charges against him to the subject matter of the charge touching on the ingredients of the offence. The plea made for disclosure of favourable facts was not separate and distinct from the charges preferred against him by the prosecution but inextricably connected to it. (para 46)

**(3)** The application made by the accused was justified in law pursuant to s. 51A(1)(c) of the CPC. The impugned decision of the SCJ was incorrect in law as the intent and purport of s. 51A(1)(c) of the CPC, which favoured the accused on all fours, was not fully appreciated and applied. The circumstances of the case of the accused, pursuant to the charges preferred, was also not fully considered before disallowing the application by the accused. Moreover, the judgment was without reasons, thus lacked basis. Allowing the accused the favourable facts did

A not at all impinge on the prosecutorial discretion by the Public Prosecutor; it did not at all forbid the investigative powers of the MACC as it was not curtailed until the completion of the trial as exigencies may arise which may warrant and justify further investigation. (para 46)

**Case(s) referred to:**

B *Anthony Gomez v. Ketua Polis Daerah Kuantan [1977] CLJU 89; [1977] 1 LNS 89 FC* ***(refd)***
*Benjamin William Hawkes v. PP [2020] 8 CLJ 267 FC* ***(refd)***
*Boucher v. The Queen [1955] SCR 16* ***(refd)***
*Dato' Seri Anwar Ibrahim v. PP [2010] 4 CLJ 265 FC* ***(refd)***
*Datuk Tiah Thee Kian v. PP & Other Appeals [2002] 2 CLJ 21 HC* ***(refd)***
C *Duport Steel Ltd & Ors v. Sirs & Ors [1980] 1 All ER 529* ***(refd)***
*Emperor v. Nasrullah & Ors AIR [1928] All 287* ***(refd)***
*Ghasem Gharezadehsharbiani Hassan v. PP [2014] CLJU 752; [2014] 1 LNS 752 CA* ***(refd)***
*Hari Ram Seghal v. PP [1980] CLJU 116; [1980] 1 LNS 116* ***(refd)***
*Hj Abdul Ghani Ishak v. PP [1979] CLJU 23; [1979] 1 LNS 23 HC* ***(refd)***
D *HKSAR v. Lee Ming Tee & Securities And Futures Commission (Intervener) [2003] 6 HKCFAR 336* ***(refd)***
*Inland Revenue Commissioners v. Hinchy [1960] 1 All ER 505* ***(refd)***
*Ketheeswaran Kanagaratnam & Anor v. PP [2024] 2 CLJ 341 FC* ***(refd)***
*Khoo Siew Bee & Anor v. Ketua Polis, Kuala Lumpur [1978] CLJU 80; [1978] 1 LNS 80 HC* ***(refd)***
E *Kulwant v. PP [1986] 2 MLJ 10* ***(refd)***
*Lee Kwan Woh v. PP [2009] 5 CLJ 631 FC* ***(refd)***
*Liaw Kwai Wah & Anor v. PP [1987] 1 CLJ 35; [1987] CLJ (Rep) 163 SC* ***(refd)***
*Manu Sharma v. State (NCT Of Delhi) [2010] 6 SCC 1* ***(refd)***
*Md Desa Hashim v. PP [1995] 4 CLJ 677 FC* ***(refd)***
F *Mraz v. The Queen [1955] 93 CLR 493* ***(refd)***
*Muhammad Faizal Dzulkifli v. PP [2017] 3 CLJ 424 CA* ***(refd)***
*Muhammad Kadar & Anor v. PP [2011] SGCA 32* ***(refd)***
*Ng Yiu Kwok & Ors v. PP [1989] CLJU 52; [1989] 1 LNS 52 SC* ***(refd)***
*PP v. Choo Chuan Wang [1992] 2 CLJ 1242; [1992] 3 CLJ (Rep) 329 HC* ***(refd)***
*PP v. Dato' Seri Anwar Ibrahim (No 3) [1999] 2 CLJ 215 HC* ***(refd)***
G *PP v. Kulasingam [1974] CLJU 118; [1974] 1 LNS 118 HC* ***(refd)***
*PP v. Mohd Fazil Awaludin [2009] 2 CLJ 862 HC* ***(refd)***
*PP v. Muhari Mohd Jani & Anor [1999] 8 CLJ 430 HC* ***(refd)***
*PP v. Raymond Chia Kim Chwee & Anor & Another Case [1985] 2 CLJ 457; [1985] CLJ (Rep) 260 FC* ***(refd)***
*PP v. Sihabduin Hj Salleh & Anor [1981] CLJ 39; [1981] CLJ (Rep) 82 FC* ***(refd)***
H *PP v. Teoh Choon Teck [1962] CLJU 141; [1962] 1 LNS 141 HC* ***(refd)***
*PP v. Yuvaraj [1968] CLJU 116; [1968] 1 LNS 116* ***(refd)***
*Prasit Punyang v. PP [2014] 7 CLJ 392 CA* ***(refd)***
*R v. Stinchcombe [1991] 3 SCR 326* ***(refd)***
*Rosli Yusof v. PP [2021] 7 CLJ 681 FC* ***(refd)***
*Sheshrao & Ors v. The State 2001 Cri LJ 3805* ***(refd)***
I *Siti Aisyah v. PP [2019] 7 CLJ 27 CA* ***(refd)***
*Sukma Darmawan Sasmitaat Madja v. PP [2007] 4 CLJ 697 CA* ***(refd)***

*Sussex Peerage Case 1884, 8 ER 1034* ***(refd)***
*Syed Abu Bakar Ahmad v. PP [1981] CLJU 127; [1981] 1 LNS 127* ***(refd)***
*Thavanathan Balasubramaniam v. PP [1997] 3 CLJ 150 FC* ***(refd)***
*Wong Pot Heng v. Zainal Abidin Putih & Anor [1990] 2 CLJ 174; [1990] 1 CLJ (Rep) 312 SC* ***(refd)***
*Yahya Hussein Mohsen Abdulrab v. PP [2021] 9 CLJ 414 FC* ***(refd)***

**Legislation referred to:**
Courts of Judicature Act 1964, s. 35
Criminal Procedure Code, ss. 51, 51A(1)(c), (2), 112, 172A(4)(d), 172B, 316(c), 323(1), 325(1), 399
Federal Constitution, arts. 5(1), 145(3)
Malaysian Anti-Corruption Commission Act 2009, ss. 16(a)(B), 24(1), 50(1), 53(3), (6), (7), 62
Penal Code, s. 377D

Code of Criminal Procedure 1973 [Ind], s. 91

*For the applicant/accused - Hisyam Teh Poh Teik, Low Wei Loke & Kee Wei Loon; M/s Low*
*For the respondent/prosecution - Nor Asma Ahmad, Rasyidah Murni Adzmi & Muhammad Asraf Mohamed Tahir; DPPs*

*Reported by Lina E*

## JUDGMENT

**Muniandy Kannyappan J:**

**Preface**

**[1]** The matter at hand emanates from an application for criminal revision by an applicant who is also the accused (used interchangeably as applicant/accused) at the Sessions Court who stands charged for offences of corruption pursuant to s. 16(a)(B), punishable under s. 24(1) of the Malaysian Anti-Corruption Commission Act 2009 (MACC Act/Act 694).

**[2]** The judicial act of revision by this court in the exercise of its revisionary or supervisory jurisdiction pursuant to s. 323(1) of the Criminal Procedure Code (CPC/Act 593) read together with s. 35 of the Courts of Judicature Act 1964 (Act 91) is on the order made by the Sessions Court Judge (SCJ) who had refused an application by the accused for pre-trial disclosure of written statement of facts favourable to his defence signed under the hand of the respondent Public Prosecutor (PP) or any person conducting the prosecution. The application by the accused is pursuant to s. 51A(1)(c) of the CPC which prescribes that the prosecution shall before the commencement of his trial of the corruption charges against him at the Sessions Court, deliver to the accused the said written statement of facts.

**[3]** The applicant has requested for the said statement which is not unknown to the respondent but is in its possession. It is the following:

(i) when he was arrested and investigated into the offences of corruption allegedly committed by him, he has made cautioned statements to the MACC. Those cautioned statements are necessitated under the law pursuant to s. 53(3) of the MACC Act, which shall not be read in isolation but together with s. 53(6) and (7) of the same Act, which altogether provides for the net effect of his failure to inform of any fact, which he could reasonably have been expected to mention when so informed to do *via* a notice in writing or otherwise.

(ii) in the said cautioned statements, the accused has informed the MACC of the facts on which he intends to rely in his defence in court during the trial. In other words, those facts mentioned form his line of defence and explanation to the accusations of corruption made against him.

(iii) in law, that line of defence and explanation made, if it exculpates him from criminal liability, would in effect be exculpatory statements made to the MACC by him.

(iv) it is those exculpatory statements which is requested for by him as it would be facts favourable to his defence at the trial.

(v) aside from that, the accused has also sought information as to when a statement was recorded by the MACC from Dato' Seri Hamzah bin Zainudin (DSHZ), which, according to him, has a causal link, thus direct bearing with the charges preferred against him. It is his contention that he was charged for the offences of corruption in the morning of 10 May 2023 and it was only after that, in the evening of 10 May 2023, the MACC had pursued to record a statement pertaining to subject matter of the preferred charges which directly refers to DSHZ.

(vi) in view of the causal link and direct bearing of that fact on the preferred charges, it stands favourable to his defence. In other words, statement from DSHZ ought to have been recorded prior to the institution of prosecution against the accused, as the gravamen of the preferred charges *per se* says the following clearly:

> … telah secara rasuah meminta bagi diri kamu satu suapan, iaitu wang sejumlah … daripada Hep Kim Hong yang merupakan Pengarah Urusan Asia Coding Centre Sdn. Bhd … sebagai dorongan untuk seorang pegawai badan awam, iaitu Dato' Seri Hamzah Bin Zainudin yang merupakan Menteri Dalam Negeri, melakukan suatu perkara yang dicadangkan, iaitu membantu Asia Coding Centre Sdn. Bhd. untuk mendapatkan apa-apa projek milik agensi-agensi di bawah Kementerian Dalam Negeri …

Hence, the request for that fact from the respondent.

(vii) to the request made for a written statement of facts favourable to his defence, the respondent had merely stated "Tiada yang diketahui". This turned out to be the bane in this matter.

(viii) contention by the applicant is that he is legally entitled to the written statement of facts favourable to his defence before the commencement of his trial, as he requires the said facts to adequately prepare his case in its entirety and defence for the purpose of refuting the preferred charges against him and also to gain an acquittal in law.

(ix) when the riposte by MACC was such, he had once again made his request, which was turned down. Resulting from that, he had applied to the SCJ to direct the respondent to produce the said written statement of favourable facts or in other words a production order which was also refused, without reasons.

(x) ensuing from that, this court is moved *vide* an application for criminal revision of the said order of refusal by the SCJ, pursuant to s. 323(1) of the CPC. By virtue of that provision, I hold the discretion to call for and examine the record of proceeding before the Sessions Court for the purpose of satisfying myself as to the correctness, legality or propriety of the refusal by SCJ. The refusal is contended to be incorrect and improper as the law applicable, which is s. 51A(1)(c) of the CPC, entitles the accused to have the said written statement of favourable facts delivered to him before the commencement of his trial, unless its supply would be contrary to public interest, which is submitted not to be.

(xi) thereon, the application for criminal revision was heard by this court *via* submission by parties who have submitted both *vide* written submission and orally.

(xii) consequently, since the law allows for such pre-trial disclosure under the CPC, the application for criminal revision was allowed, denoting that the refusal by SCJ is unjustified in law, thus incorrect and improper and it shall be revised and corrected. In doing so, this court did not lose sight of s. 325(1) of the CPC and the order of this court reversing the order of refusal is pursuant to s. 316(c) of the CPC.

The arguments advanced, law applicable, findings arrived at and ultimately decision made follows in this judgment. However, before embarking on the same, I opine it would be prudent to trace the treasured principles of law applicable to both the applicant and respondent pertaining to pre-trial disclosure in a criminal proceeding generally and specifically on the application and applicability of s. 51A(1)(c) of the CPC.

A **Pre-trial Disclosure In Criminal Proceedings**

**[4]** Pre-trial disclosure is part and parcel of our administration of criminal justice, as s. 51 of the Criminal Procedure Code (CPC/Act 593) has existed since time immemorial.

B **[5]** Its rationale is found in the commentaries by Bashir A. Mallal in *Mallal's Criminal Procedure*, 4th edn, on s. 57 of the Colony Code of Criminal Procedure, somewhat *pari materia* with our present CPC. The relevant part reads:

> C Before issuing a summons under this section, the Court is bound to consider judicially whether the production of documents is necessary or relevant for the purpose of inquiry, trial or other proceeding. *R. v Pratt* ILR 47 Cal 647.
>
> D Although the language of this section is very wide, the Court's discretion under it is not absolute. The Court's discretion must be exercised judicially. Anything which may reasonably be regarded as forming part of the evidence in the case may be ordered to be produced, and that is the primary object of these provisions.
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> E Some things not necessary for evidentiary purposes may also come within them if there is any direct connection between the thing and the subject-matter of the proceeding: for instance, if the thing forms part of the proceeds of an offence.

**[6]** Further, commentaries by Ratanlal on a similar provision in s. 91 of the Indian Code of Criminal Procedure 1973, also *pari materia* with our corresponding provision s. 51 of the CPC reads:

> F The section deals with documents forming the subject of a criminal offence as also with documents which are or can be used only as evidence in support of a prosecution. *Lakhmidas* (1903) 5 Bom. LR 980
>
> G The thing called for must have some relation to, or connection with, the subject-matter of the investigation or inquiry, or throw some light on the proceeding, or supply some link in the chain of evidence.
>
> When an application is made to a Court, or to a police officer under this section, the Court is bound to consider whether there is a *prima facie* case for supposing that the documents are relevant, *ie*, whether books of a particular type are likely to have a bearing on the case.
>
> H If the Court thinks they are, then it can order production. The Court may also consider whether the document *etc*, is being suppressed or may be tampered with or destroyed by the party in whose possession it is or may be entirely lost. *Bashir Hussein v. H.R. Jokhi* (1966) AIR Bom. 253.

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**Process Involved**

**[7]** Therefore, pre-trial discovery or disclosure in a criminal proceeding is an ongoing process and takes place at any stage before and during the trial. Since it is provided for by the law, the accused has access *via* inspection to examine, copy or photograph (in current terms, imaging or scanning) items in the possession of prosecution. Among the items subject to disclosure and inspection include, *inter alia,* tangible objects, digital recordings, books and expert reports.

**[8]** The above evolution and fruition demonstrates – initially, the accused is only allowed discovery *vide* access to certain category of documents forming part and parcel of the case against him, like the first information report (FIR) and the preferred charge(s), progressively a myriad of such. On access to the FIR prior to or during his trial, the case of *Anthony Gomez v. Ketua Polis Daerah Kuantan* [1977] CLJU 89; [1977] 1 LNS 89; [1977] 2 MLJ 24, decides he is allowed access, if the rule of relevancy is complied with. It is so decided as the accused is lawfully entitled to know of the allegation against him by the complainant. He has a tangible interest to know of its maker and content. His direct interest to know of its content is because he could adequately prepare his defence prior to trial, by marshalling his defence and calling relevant witness(s) and advancing his defence and explanation, to prove and pinpoint his innocence in court at his trial.

**[9]** Moving forward, Suffian LP (as he was then) speaking for the High Court in the case of *Khoo Siew Bee & Anor v. Ketua Polis, Kuala Lumpur* [1978] CLJU 80; [1978] 1 LNS 80; [1979] 2 MLJ 49, decided that a police officer who records a cautioned statement (presently if for an offence under the Penal Code (PC/Act 574), a police statement or a s. 112 of the CPC statement or an out of court statement) of the accused, does so pursuant to his official duty. Ensuing from that, the said statement turns out to be a public document, and the accused again has a tangible or direct interest in it, simply because he is its maker. Thus, in law, he is entitled to an automatic right of access to that statement. As such, he is provided with a certified copy before commencement of his trial. In fact, in that statement, he may have given his version to the recording officer, which would be ventilated by him when putting forward his case during cross-examination of the prosecution witnesses who would be testifying against him and if he is ordered by the court to defend himself, his testimony in court would be if not the same but parallel to what he had said in his out of court statement. Thus, the law recognises his direct interest to have the statement before hand in order to advance his defence adequately in court to maintain his innocence. In any event, he is presumed innocent until proven guilty beyond reasonable doubt by the prosecution.

**[10]** Subsequently, in the case of *Hj Abdul Ghani Ishak v. PP* [1979] CLJU 23; [1979] 1 LNS 23; [1980] 2 MLJ 196, the accused was also allowed to access to both his cautioned and uncautioned statements (presently as referred to above) but not to copies of statement made by co-accused. He is disentitled to the statement by co-accused as he may be called as a witness against him, thus for fear of temperance *vide* intimidation, *etc*, of the said witness, he is disallowed a copy of it. On the same axis, police or s. 112 of the CPC statements of witnesses shall not be given to the accused prior to his trial. The position of the law has not changed, save for access to it (specifically offered witness by the prosecution) during the case of defence. (See: *Siti Aisyah v. PP* [2019] 7 CLJ 27; [2019] 4 MLJ 46).

**[11]** The CPC, by its s. 399, renders admission as evidence, reports made by experts. It is admissible as evidence without the maker of the report called as witness, provided the said report is served on to the accused prior to the commencement of his trial. If the accused wishes to cross-examine the expert on his expertise and the content of his report, he has to give requisite notice to the prosecution to enable them to make available the said expert in court.

**[12]** Ensuing from the above line of authorities and provision of the law, pre-trial disclosure is enabled to the accused of documents which are in the possession of prosecution premised on his tangible and direct interest to have them in order to prepare and advance his defence in court adequately with the ultimate aim of pin-pointing his innocence and also to raise a reasonable doubt on the proof tendered against him by prosecution. It syncs with the accused's right to fair trial as well as open justice for both the prosecution and defence, who appear in court on equal arms. Equality of arms as a recognised equitable rule of law, shall not be only on paper but must be given its desired effect to parties in a criminal proceeding, including the accused.

**Impediment**

**[13]** Section 51 of the CPC caters as a general provision to the accused for pre-trial disclosure before commencement or during his trial. It provides wherever any court or police officer making a police investigation considers that the production of any property or document is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under the CPC by or before that court or officer, such court may issue a summons to the person in whose possession or power such property or document is believed to be requiring him to attend and produce it. The *sine qua non* for an order of pre-trial disclosure pursuant to that provision is if the production of said property or document is necessary and desirable for the purpose of his trial. Although, literally, the said provision allows a wide latitude of pre-trial disclosure, but discretion of the court to order production is fettered. It is so decided by the then Supreme Court in the case of *PP v. Raymond Chia Kim Chwee & Anor & Another Case* [1985] 2 CLJ 457; [1985] CLJ (Rep) 260; [1985] 2 MLJ 436 on the following terms:

The entitlement of the accused under section 51 of the Criminal Procedure Code to any document or copies of document or other material in the possession of the prosecution is entirely at the discretion of the Court having regard to the justice of the case.

The discretion should not however be exercised as to enable the accused to gain access to materials before the trial as in the case of pre-trial discovery and inspection of documents in a civil proceeding.

The accused in a criminal trial should have sufficient notice of what is alleged against him so as to enable him to prepare his defence.

So long as that requirement is satisfied the law is satisfied.

**[14]** Flowing from that, an order of court has to precede pre-trial disclosure of documents and/or information to the accused which is in the possession of the prosecution. The said order is not easily obtained, as the accused bears an onerous duty to demonstrate to the court, the relevancy of the documents and information sought, that it is also desirable and necessary for his trial. In other words, he must show that it is all required for the purpose of preparing his defence adequately and to raise it in court during his trial. It also matters at what stage of the trial; the documents are sought. Purpose is to negate the preferred charge against him and prove his innocence.

**[15]** Generally, the accused has not the legal burden of proving his innocence, but only to raise a reasonable doubt, unless the law allows a rebuttable presumption to be invoked against him, in which case he has to advance his defence on a balance of probabilities, which is higher than raising a reasonable doubt. (See the oft-quoted Privy Council case of *PP v. Yuvaraj* [1968] CLJU 116; [1968] 1 LNS 116; [1969] 2 MLJ 89). To raise a reasonable doubt, he cannot pluck it from thin air but forearmed with the necessary and requisite documents and/or information to do so. At point of charge, before commencement of trial, the accused would not be in possession of any documents and/or information, as it would have been seized *en bloc* by the enforcement agency when investigating the crime alleged against him. He is only left with a notice that he would be charged in court and nothing else. As such, the law demands for him to show tangible and direct interest in the required documents and/or information. Chronologically, case authorities like *Syed Abu Bakar Ahmad v. PP* [1981] CLJU 127; [1981] 1 LNS 127; [1982] 2 MLJ 186, *PP v. Teoh Choon Teck* [1962] CLJU 141; [1962] 1 LNS 141; [1963] MLJ 34, *PP v. Raymond Chia Kim Chwee & Anor & Another Case* [1985] 2 CLJ 457; [1985] CLJ (Rep) 260; [1985] 2 MLJ 436, *Kulwant v. PP* [1986] 2 MLJ 10, later *Datuk Tiah Thee Kian v. PP & Other Appeals* [2002] 2 CLJ 21; [2002] 1 MLJ 585; *Dato' Seri Anwar Ibrahim v. PP* [2010] 4 CLJ 265; [2010] 2 MLJ 312, supports the aforesaid proposition in this realm of law. Thus, only with a legitimate basis

premised on relevancy, necessity and desirability, an order of court in his favour for a production order by the court pursuant to s. 51 of the CPC would come on.

**[16]** In a nutshell, a production order pursuant to s. 51 of the CPC is made on the following basis:

(i) an accused is entitled to documents specified in the preferred charge against him so that he could prepare his defence. (See again *PP v. Raymond Chia Kim Chwee & Anor; Kulwant v. PP*).

(ii) criminal law disables pre-trial interlocutory, discovery and a fishing expedition for evidence.

(iii) the provision caters for an accused, prosecution and concerned third party.

(iv) document sought must be clearly specified.

(v) it is also invoked to enable production of secondary evidence.

(vi) document sought by the accused has to be either for dislodgment of the case of prosecution or build up his own case as defence.

(vii) timeous application ought to be made, pre-trial or at an appropriate time if later than commencement, and when the trial is underway so that the court is also armed with necessary material in order to decide on relevancy, necessity or desirability for a production order. (See again *Kulwant v. PP*).

**Other Relevant Case Authorities**

**[17]** While the principles discussed above are in terms of the duty of prosecution to the accused, but when the issue becomes disputatious as to documents and facts to be disclosed pre-trial, if the law is not complied with, it is for the court to decide and rule on any asserted legal ground relied upon to justify the withholding of disclosure of relevant material. (See by analogy the case of the Hong Kong Court of Final Appeal's decision in *HKSAR v. Lee Ming Tee & Securities And Futures Commission (Intervener)* [2003] 6 HKCFAR 336 decided by Sir Anthony Mason NPJ). It would appear later in this judgment, the SCJ in the present case, had refused an order for pre-trial disclosure *albeit* there being a legal basis.

**[18]** Further, Rand J in the Canadian case of *Boucher v. The Queen* [1955] SCR 16, (referred to by Sopinka J in the decision of the Supreme Court of Canada in *R v. Stinchcombe* [1991] 3 SCR 326) decided:

> It cannot be over-emphasised that the purpose of a criminal prosecution is not to obtain a conviction, it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime.

Counsel have a duty to see that all available legal proof of the facts is presented. It should be done firmly and pressed to its legitimate strength but it must also be done fairly.

The role of prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be effectively performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings.

*I would add that the fruits of the investigation which are in the possession of counsel for the Crown are not the property of the Crown for use in securing a conviction but the property of the public to be used to ensure that justice is done.*

(emphasis added)

**[19]** In the case from India, wherein our provision relating to pre-trial disclosure in the CPC is *pari materia*, the case of *Sheshrao & Ors v. The State* 2001 Cri LJ 3805, a decision of the Karnataka High Court on appeal from the decision of a Sessions Judge to convict the appellants of murder is instructive. In that case, HN Narayan J, who delivered the judgment of the court, noted:

On careful perusal of the prosecution papers, we find that there is an attempt to suppress some material facts from the purview of the Court. *The court further cited decisions of the Supreme Court of India* for the following propositions:

(a) that a prosecutor is an officer of the Court, and the Court is entitled to have the benefit of fair exercise of his function;

(b) that the Public Prosecutor is an independent statutory authority not part of the investigating agency; and

(c) that the Public Prosecutor holds a public office and the primacy given to him under the law of criminal procedure has a social purpose.

Narayan J then came to the following findings on the duty of the Prosecution: There should be on the part of the Public Prosecutor no unseemly eagerness for or grasping at conviction.

His duty as Public Prosecutor is not merely to secure the conviction of the accused at all costs but *to place before the Court whatever evidence is in his possession, whether it be in favour or against the accused and to leave it to the Court to decide upon all such evidences whether the accused had or had not committed the offence with which he stood charged.*

The Public Prosecutor is not supposed to go out of his way to secure a conviction. He has to be truthful and impartial. A Public Prosecutor is not a mouthpiece for the State. He must not consciously mis-state the facts, nor knowingly conceal the truth. The Public Prosecutor must not suppress or keep back from the Court evidence relevant to the determination of the guilt or innocence of the accused. He must present a complete picture

A and not be partial. He has to be fair to both sides in the presentation of the case. The ideal Public Prosecutor is not concerned with securing convictions, or with satisfying the departments of the State Government, with which he has to be in contact. He must consider himself as an agent of justice. (emphasis added)

B Narayan J went on further to decide that the evidence suppressed by the prosecution suggested that the material incriminating the appellants had been concocted and could not be relied on, and ordered the setting aside of the convictions and sentences of the appellants. That seems to be the fatal blow for defying pre-trial disclosure.

C **[20]** Further, on our shores, there is the case of *Sukma Darmawan Sasmitaat Madja v. PP* [2007] 4 CLJ 697; [2007] 5 MLJ 666, which concerned an accused who had pleaded guilty before a Sessions Court to a charge of gross indecency under s. 377D of the Penal Code. The accused had appealed as well as sought criminal revision before the High Court, but his appeal and D application for revision were dismissed on procedural grounds. He then appealed to the Court of Appeal, which decided the following:

It is our opinion that the decision of the High Court cannot stand for several reasons.

First, there was evidence placed before the High Court that at the time E *when the accused pleaded guilty the prosecution had in their possession material which, at the very least, cast a doubt on the guilt of the accused.*

The material in question was a medical report by a Government doctor who had examined the accused. In his report he says that there were no signs of any penetration in the accused's anus, whether recent or old.

F If you look at the charge, in substance it alleges penetration. That is the particular act of gross indecency which the prosecution says brings the case under s. 377D.

So, it comes to this. The prosecution had in its possession evidence favourable to the defence. What should it do in such circumstances? The G answer is to be found in the decision of the English Court of Appeal in *Dallison v. Caffrey (sic)* [1965] 1 QB 348. In that case Lord Denning MR said:

The duty of a prosecuting counsel or solicitor, as I have always understood it, is this:

H If he knows of a credible witness who can speak to material facts which tend to show the prisoner to be innocent, he must either call that witness himself or make his statement available to the defence.

It would be highly reprehensible to conceal from the court the evidence which such a witness can give. If the prosecuting counsel or solicitor I knows, not of a credible witness, but a witness whom he does not accept as credible, he should tell the defence about him so that they can call him

if they wish. Here the solicitor, immediately after the court proceedings, gave the solicitor for the defence the statement of Mr and Mrs Stamp; and thereby he did his duty.

*In the present case, the sessions judge was denied access to information favourable to the accused. Had it been made available to her, she may well have rejected the plea of guilty on the ground that an offence may not have been committed for the want of proof of an essential allegation in the charge.*

For it is trite law that in a case where an accused pleads guilty, the prosecution when reciting the facts, confine itself to only those facts it can prove. See, *Abdul Kadir bin Abdul Rahman v. Public Prosecutor* [1984] 1 MLJ 80; *Mohammad bin Hassan v. Public Prosecutor* [1998] 5 MLJ 65. We are satisfied that the accused's conviction based on his plea of guilt may be quashed on this ground alone. But, as it happens, there are other grounds as well.

And before moving onto them we must express our deep regret that the suppression of material evidence by the prosecution occurred in this case despite the reminder given by Vincent Ng JC (as he then was) in *Public Prosecutor v. Lee Eng Kooi* [1993] 2 MLJ 322 when he said that the duty of deputy public prosecutors is:

> *... to help the court arrive at the truth and to honour truth itself overrides any lingering ill-founded eagerness that they may harbour, to satisfy their superiors that they have robotically objected to the objectable.*
>
> *Surely, the eternal question of which version if any, abides by the truth is solely and exclusively within the domain of judicial determination and not within the purview of counsel or DPPs.* (emphasis added)

**[21]** Relating, *inter alia,* to the above case authorities, which form part of the judgment of His Lordship VK Rajah JA (as he then was) delivering judgment of the Court of Appeal of Singapore in the case of *Muhammad Kadar & Anor v. PP* [2011] SGCA 32 decided that as a matter of general principle, the Malaysian Court of Appeal's view in *Sukma* is emphatically agreed, that there is an inextricable link between the prosecution's specific duty not to suppress material evidence and its general duty to the court, and that where a breach of the duty against suppression threatens to cause a miscarriage of justice, the court should prevent it by any permissible means. Once again, that is the fatal effect of defiance of the law pertaining to pre-trial disclosure. Further, the elucidation by His Lordship Zawawi Salleh FCJ (as he was then) of the powers of the PP and their special role in criminal trials in the case of *Rosli Yusof v. PP* [2021] 7 CLJ 681; [2021] 4 MLJ 479, resonates. His Lordship had decided, amongst others, that the prosecutors are under several well-defined duties, which includes the duty of disclosure pursuant to s. 51A of the CPC. It is emphasised that at all times, prosecutors are expected to present their case fairly, impartially and professionally and assist the court

A in arriving at the truth by producing all the relevant facts to the court as officers of the court. In fact, His Lordship had also referred to the case of *Muhammad Kadar & Anor v. PP*, referred to above.

**[22]** In sum total, the narration of the above case authorities and the decisions made point toward the role of the prosecution in the pre-trial B disclosure of relevant and necessary documents and facts to the accused person so that he would be placed on equal footing to defend the charges preferred against him with ease. He would be unable to do so, if the said information, documents and facts are not made available to him at the earliest opportunity which is before commencement of his trial. The C information, documents and facts sought are not new to the prosecution but in their possession, hence the order of production and delivery to the accused. If they do not have it, they have to come out right at the onset to inform so to the accused. But when the issue becomes disputatious as to documents, information and facts to be disclosed pre-trial, especially so D when the law is not complied with, it is then for the court as the last bastion of justice to intervene and decide and rule in accordance with the law, allowing no justification to withhold disclosure of relevant material. So is the circumstance in the present case, which could be discerned from the following.

E **Section 51A Of The CPC**

**[23]** Premised on the same legal footing, s. 51A of the CPC was introduced in the year 2006. For the sake of completeness, the provision renders the following:

F (1) The prosecution shall before the commencement of the trial deliver to the accused the following documents:

(a) A copy of the information made under section 107 relating to the commission of the offence to which the accused is charged, if any;

G (b) A copy of any document which would be tendered as part of the evidence for the prosecution; and

(c) **A written statement of facts favourable to the defence of the accused** signed under the hand of the Public Prosecutor or any person conducting the prosecution.

H (2) Notwithstanding paragraph (c), the prosecution **may not supply any fact favourable to the accused if its supply would be contrary to public interest.**

(3) A document shall not be inadmissible in evidence merely because of non-compliance with subsection (1).

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(4) The Court may exclude any document delivered after the commencement of the trial if it is shown that such delivery was so done deliberately and in bad faith.

(5) Where a document is delivered to the accused after the commencement of the trial, the Court shall allow the accused:

(a) A reasonable time to examine the document; and

(b) To recall or re-summon and examine any witness in relation to the document. (emphasis added)

**[24]** The provision in fact allows a wider latitude for pre-trial disclosure to an accused. The documents and facts an accused is entitled to are enumerated with specificity and it is easier for the court to order (if need be) delivery of the said documents and facts. The provision (which is not new anymore) syncs with an accused person's right to a fair trial, which is fundamentally preserved and protected by our supreme law, the Federal Constitution in its art. 5(1). Judgment of our Chief Justice Tengku Maimun Tuan Mat in the case of *Yahya Hussein Mohsen Abdulrab v. PP* [2021] 9 CLJ 414; [2021] 5 MLJ 811, resonates wherein Her Ladyship had decided:

> It is beyond argument that art. 5(1) of the Federal Constitution fundamentally guarantees the right to fair trial. This is encompassed in the words "save in accordance with law". In other words, it is only through the process of law that a person may be deprived of his life or personal liberty. That art. 5(1) guarantees the right to a fair trial is etched into our case law. See for example two judgments of this court in *Dato' Seri Anwar bin Ibrahim v. Public Prosecutor* [2010] 2 MLJ 312 at [49] and *Public Prosecutor v. Gan Boon Aun* [2017] 3 MLJ 12 at [13].

It follows that if an accused person can establish a breach of this right then, he would be entitled to an unconditional release and the charges levelled against him would fall to the ground. (See: *PP v. Choo Chuan Wang* [1992] 2 CLJ 1242; [1992] 3 CLJ (Rep) 329; *Lee Kwan Woh v. PP* [2009] 5 CLJ 631; [2009] 5 MLJ 301).

**[25]** The *raison d'etre* being that the accused must be able to defend himself against the preferred charge adequately, in order to gain an acquittal in law. Therefore, he is allowed delivery of the documents and favourable facts listed without the need for an application (like that under s. 51 of the CPC). The law preserves and protects his automatic right to pre-trial disclosure in a criminal proceeding where he is accused of a crime. Constitutionally, the prosecution is bound by an express duty under the law to render full, fair and frank pre-trial disclosure within the ambit of s. 51A of the CPC.

**[26]** It too includes prosecution furnishing the accused with a written statement of facts favourable to his defence to the charge preferred against him. The said facts are not fiction, imagination or conjecture by the accused

A but springing out of the investigation which had taken place before he was charged in court. (See by analogy the case of the Indian Supreme Court in *Manu Sharma v. State (NCT Of Delhi)* [2010] 6 SCC 1).

**[27]** As recently decided by our apex court in the case of *Benjamin William Hawkes v. PP* [2020] 8 CLJ 267, s. 51A of the CPC in effect provides B expressly for disclosure of FIR, documents or reports which the prosecution intends to tender at his trial and also statement of facts favourable to him, subject to the overriding exception of public interest. Thus, to reiterate, an automatic pre-trial disclosure is enabled by the law for prosecution to supply those documents and favourable facts at once when the accused has been C charged in court.

**[28]** As discussed above on the benefit of pre-trial disclosure to an accused, s. 51A of the CPC fortifies it further thus placing the accused and prosecution on equal footing so that the accused is forearmed with the necessary ammunition in order for him to defend himself during the trial and the D prosecution having in their arsenal a surfeit of material evidence to prove a case beyond reasonable doubt against the accused. As the accused is presumed innocent until proven guilty, his entitlement to pre-trial disclosure at the earliest opportunity is now mandated by the law. It is the legitimate expectation of the accused, now sanctioned by law and he shall not be E without the documents and favourable facts enumerated in s. 51A of the CPC, which are also of tangible and direct interest to him before the commencement of his trial in order to defend himself against the preferred charge(s). The law as it stands now, does not allow trial by ambush. The court, on the other hand, sits impartially to see that s. 51A is complied with F by the prosecution and not in defiance of it. That is the role of the trial judge, when managing the case against the accused pursuant to s. 172B of the CPC (when read together with s. 172A(4)(d) of the CPC). If s. 51A is defied or breached, the trial judge has to see to its compliance with all urgency before the trial of the accused commences and also to avoid inordinate delay. (See G by analogy the case of *PP v. Mohd Fazil Awaludin* [2009] 2 CLJ 862).

**[29]** It is so apparent that with the inclusion of s. 51A into the CPC, the accused would be better prepared for his case. It is worded so clearly and with no ambiguity. Hence, the intention of the Parliament when including it shall be construed from the words used, being plain and simple, without H a room for a contrary construction. Any form of construction or interpretation of the provision has to be in favour of the accused, as it is a penal provision, which allows benefit of doubt to the accused. (See the judgment of Lord Reid of the House of Lords (HOL) in the case of *Inland Revenue Commissioners v. Hinchy* [1960] 1 All ER 505 at p. 512 referred to I in the oft-quoted HOL's decision in the case of *Duport Steel Ltd & Ors v. Sirs & Ors* [1980] 1 All ER 529). On the principle of statutory interpretation that

the intent of Legislature has to be gathered from statutory words, our Chief Justice Tengku Maimun Tuan Mat in the case of *Ketheeswaran Kanagaratnam & Anor v. PP* [2024] 2 CLJ 341, had decided on the following terms:

> … while the intention of Parliament is important, it is after all only an aid of interpretation. The judicial role requires that legislation must be read foremost as they stand (with regard to the Parliamentary intent behind its enactment) as opposed to giving primary significance to the intended reading when such a reading is not supported by the actual words used or clearly implied …

**[30]** Thus, although the explanatory statement to the bill incorporating s. 51A of the CPC, renders assistance to the mode and manner of interpretation of the precise and unambiguous words the provision has employed, no more can be necessary than to expound those words in their natural and ordinary sense, as the words by themselves alone best declare the intention of the lawgiver. (See *Sussex Peerage Case* 8 ER 1884; *Wong Pot Heng v. Zainal Abidin Putih & Anor* [1990] 2 CLJ 174; [1990] 1 CLJ (Rep) 312; [1990] 2 MLJ 410). The purpose of s. 51A of the CPC as explained by the Minister in charge at the August House of Parliament resonates:

> Pemberian apa-apa document atau laporan yang akan dikemukakan oleh pihak pendakwa dalam kesnya kepada pihak pembelaan untuk menyediakan kes mereka dengan lebih sempurna. Ini akan membawa keadilan bukan sahaja kepada tertuduh tetapi juga kepada semua pihak. Selain dari itu ia akan menjimatkan masa mahkamah dimana pihak pembelaan untuk menyediakan kes mereka dengan lebih sempurna.

## Events Leading To The Application For Criminal Revision

**[31]** Easing back into the facts and circumstances of the case, the applicant herein, Sim Choo Thiam, stands charged for offences of corruption pursuant to s. 16(a)(B) of the MACC Act. There are altogether four preferred charges against him. It forms the subject matter of criminal proceeding at the Sessions Court *vide* Criminal Trial No. WA-62R-43-05-2023. The said charges in its original form are reproduced below:

> **Pertuduhan Pertama**
>
> Bahawa kamu, pada bulan Jun 2021, di pejabat Shaas Holdings, Tingkat 3, Blok D2, Solaris Dutamas, Jalan Dutamas 1, di dalam Wilayah Persekutuan Kuala Lumpur, telah secara rasuah meminta bagi diri kamu satu suapan, iaitu wang sejumlah RM15,000,000.00 (Ringgit Malaysia Lima Belas Juta) daripada Hep Kim Hong yang merupakan Pengarah Urusan Asia Coding Centre Sdn. Bhd melalui Syed Abu Zafran bin Syed Ahmad, sebagai dorongan untuk seorang pegawai badan awam, iaitu Dato' Seri Hamzah Bin Zainudin yang merupakan Menteri Dalam Negeri, melakukan suatu perkara yang dicadangkan, iaitu membantu Asia Coding Centre Sdn. Bhd. untuk mendapatkan apa-apa projek milik agensi-agensi

di bawah Kementerian Dalam Negeri, oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 16(a)(B) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [Akta 694] yang boleh dihukum di bawah seksyen 24(1) Akta yang sama.

**Pertuduhan Kedua**

Bahawa kamu, pada 19 Julai 2021, di kawasan tempat letak kereta aras G4, Blok D1, Solaris Dutamas, Jalan Dutamas 1, di dalam Wilayah Persekutuan Kuala Lumpur, telah secara rasuah meminta bagi diri kamu satu suapan, iaitu wang tunai berjumlah RM3,500,000.00 (Ringgit Malaysia Tiga Juta Lima Ratus Ribu) daripada Hep Kim Hong yang merupakan Pengarah Urusan Asia Coding Centre Sdn. Bhd, sebagai dorongan untuk seorang pegawai badan awam, iaitu Dato' Seri Hamzah Bin Zainudin yang merupakan Menteri Dalam Negeri, melakukan suatu perkara yang dicadangkan, iaitu membantu Asia Coding Centre Sdn. Bhd. untuk mendapatkan apa-apa projek milik agensi-agensi di bawah Kementerian Dalam Negeri, oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 16(a)(B) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [Akta 694] yang boleh dihukum di bawah seksyen 24(1) Akta yang sama.

**Pertuduhan Ketiga**

Bahawa kamu, pada 28 Julai 2021, di kawasan tempat letak kereta aras G4, Blok D1, Solaris Dutamas, Jalan Dutamas 1, di dalam Wilayah Persekutuan Kuala Lumpur, telah secara rasuah meminta bagi diri kamu satu suapan, iaitu wang tunai berjumlah RM5,500,000 (Ringgit Malaysia Lima Juta Lima Ratus Ribu) daripada Hep Kim Hong yang merupakan Pengarah Urusan Asia Coding Centre Sdn. Bhd, sebagai dorongan untuk seorang pegawai badan awam, iaitu Dato' Seri Hamzah Bin Zainudin yang merupakan Menteri Dalam Negeri, melakukan suatu perkara yang dicadangkan, iaitu membantu Asia Coding Centre Sdn. Bhd. untuk mendapatkan apa-apa projek milik agensi-agensi di bawah Kementerian Dalam Negeri, oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 16(a)(B) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [Akta 694] yang boleh dihukum di bawah seksyen 24(1) Akta yang sama.

**Pertuduhan Keempat**

Bahawa kamu, pada 30 Julai 2021, di kawasan tempat letak kereta aras G4, Blok D1, Solaris Dutamas, Jalan Dutamas 1, di dalam Wilayah Persekutuan Kuala Lumpur, telah secara rasuah meminta bagi diri kamu satu suapan, iaitu wang tunai berjumlah RM6,000,000 (Ringgit Malaysia Enam Juta) daripada Hep Kim Hong yang merupakan Pengarah Urusan Asia Coding Centre Sdn. Bhd, sebagai dorongan untuk seorang pegawai badan awam, iaitu Dato' Seri Hamzah Bin Zainudin yang merupakan Menteri Dalam Negeri, melakukan suatu perkara yang dicadangkan, iaitu membantu Asia Coding Centre Sdn. Bhd. untuk mendapatkan apa-apa projek milik agensi-agensi di bawah Kementerian Dalam Negeri, oleh

yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 16(a)(B) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [Akta 694] yang boleh dihukum di bawah seksyen 24(1) Akta yang sama.

**[32]** Surveying the preferred charges against the accused at the Sessions Court, the following are apparent:

(i) the offences of corruption were alleged to have been committed on dates – June 2021; 19 July 2021; 28 July 2021 and 30 July 2021.

(ii) as for the first charge, the place of offence is at the office of Shaas Holdings, Tingkat 3, Blok D2, Solaris Dutamas, Jalan Dutamas 1, at the Federal Territory of Kuala Lumpur.

(iii) as for the remaining charges, it is alleged to have been committed at a car park area, Aras G4, Blok D1, Solaris Dutamas, Jalan Dutamas 1, at the Federal Territory of Kuala Lumpur.

(iv) the amounts involved are – RM15 million for the first charge; RM3.5 million for the second charge; RM5.5 million for the third charge and RM6 million for the fourth charge.

(v) the *actus reus* and *mens rea* of the offences contained in the preferred charges, in its original form and language is – telah secara rasuah meminta bagi diri kamu satu suapan, for the amounts referred to above, daripada Hep Kim Hong yang merupakan Pengarah Urusan Asia Coding Centre Sdn Bhd melalui Syed Abu Zafran bin Syed Ahmad, sebagai dorongan untuk seorang pegawai badan awam, iaitu Dato' Seri Hamzah bin Zainudin yang merupakan Menteri Dalam Negeri, melakukan suatu perkara yang dicadangkan, iaitu membantu Asia Coding Centre Sdn Bhd untuk mendapatkan apa-apa projek milik agensi-agensi di bawah Kementerian Dalam Negeri.

(vi) save for the first charge, which contains "melalui Syed Abu Zafran bin Syed Ahmad", the remaining three charges do not contain the name of that individual.

(vii) the accusation in the charges is stipulated as offences under s. 16(a)(B) of the MACC Act, punishable under s. 24(1) of the same Act.

(viii) therefore, preferred charges against the accused, are for receipt of gratification of the various amounts from Hep Kim Hong in order to induce a public officer, *to wit*, Dato' Seri Hamzah bin Zainudin (DSHZ), who was then the Minister of Home Affairs, for him to assist the company Asia Coding Centre Sdn Bhd to obtain any project under the aegis of the agencies under the Ministry of Home Affairs.

**[33]** Pursuant to s. 51A of the CPC, the accused was served with copies of the following documents:

(i) cautioned statement recorded on 16 February 2023 by the MACC;

(ii) further cautioned statement recorded on 28 February 2023 by the MACC; and

(iii) a written statement of facts favourable to the defence of the accused signed by the prosecuting officer of the MACC dated 14 June 2023.

**[34]** In the said written statement of facts furnished, it was merely stated – "Tiada yang diketahui". It shows MACC is unaware or does not know of any facts which are favourable to the defence of the accused pertaining to four preferred charges against the accused. This has turned out to be the bane for the applicant, necessitating an application to the SCJ, subsequently turning out as the subject matter of this application for criminal revision.

**[35]** Ensuing from that, counsel for the accused had written to the MACC to reconsider its position on the pre-trial disclosure of statement of favourable facts. Contention by the accused is, there are indeed such facts favouring the defence of the accused, within the knowledge of the MACC, which are:

(i) it was only after the accused was charged at the Sessions Court for corruption offences in the morning on 10 May 2023, the MACC had pursued to record a statement only in the evening of 10 May 2023, pertaining to the subject matter of the preferred charges having reference to DSHZ.

(ii) aside from that, both the cautioned statements by the accused given to the MACC on 16 February 2023 and 28 February 2023, contain exculpatory statements not supporting any of the ingredients of the offences alleged against him, as specified in all the preferred charges.

**[36]** Following to that, it is contended by the accused that the statement taken from DSHZ only after the charges against him were preferred is in his favour as it touches on the propriety of the said charges referring to DSHZ. Further, the content of the cautioned statements, which are exculpatory, would also definitely favour him in his defence at his trial, which the MACC is legally bound to deliver to him pursuant to s. 51A(1)(c) of the CPC. As it is exculpatory, it would be tantamount to negation of his guilt and maintaining his innocence to the accusations made against him in the preferred charges.

**[37]** Notwithstanding the intimation by the accused to the MACC before the SCJ on 28 June 2023, it had refused to stray away from its position, and the reply to the accused is maintained as "Tiada yang diketahui".

**[38]** The accused then, *via* his counsel, had pursued with a notice of application to the SCJ on 4 July 2023 *vide* Criminal Application No. WA-64-82-07-2023, for an order of pre-trial disclosure for the respondent to deliver to him a fresh written statement of facts. An order was also sought for the trial of the case to be stayed pending delivery of a written statement of favourable facts favouring the defence of the accused.

**[39]** The application was heard and dismissed by the SCJ, without any reasons furnished, either orally or in writing. Consequent to that, the accused has moved this court *via* a formal notice of application to invoke its revisionary jurisdiction pursuant to s. 323(1) of the CPC, for the order of refusal by SCJ to be reconsidered and appropriately revised. (See: *PP v. Muhari Mohd Jani & Anor* [1999] 8 CLJ 430; [1996] 3 MLJ 116). Basis being, the refusal was improper and in defiance of s. 51A(1)(c) of the CPC. Applying s. 35 of the CJA together with s. 323(1) of the CPC, this court has visited the record of proceeding of the Sessions Court held on 27 September 2023, and the order of refusal by the SCJ. Accordingly, pursuant to s. 325(1) of the CPC, this court proceeded to hear submission by parties. On curial scrutiny, this court finds the contention advanced by the accused and laboured on diligently and to the point by his counsel when submitting on this application for criminal revision favours a decision. In this respect, I am mindful of this court's powers in revision, which is subject to the CJA and CPC. Also, the object of revisionary powers, is to confer upon this court a supervisory jurisdiction in order to correct or prevent a miscarriage of justice. When exercising the revisionary jurisdiction, the pivotal question to be considered is whether substantial justice has been done to parties, including the applicant in the present case and if the order made by the SCJ should be interfered with in the interest of justice. The fulcrum being, to correct the miscarriage of justice arising, *inter alia,* from misconception of law, irregularity of procedure which has resulted in some injury to the due maintenance of law and order, thereby causing undeserved hardship to the applicant. (See cases like, *Emperor v. Nasrullah & Others* AIR 1928 All 287; *PP v. Kulasingam* [1974] CLJU 118; [1974] 1 LNS 118; [1974] 2 MLJ 26; *Liaw Kwai Wah & Anor v. PP* [1987] 1 CLJ 35; [1987] CLJ (Rep) 163; [1987] 2 MLJ 69; *Hari Ram Seghal v. PP* [1980] CLJU 116; [1980] 1 LNS 116; [1981] 1 MLJ 165).

**Favourable Facts**

**[40]** Favourable facts, is not defined under the CPC. But legally speaking, by virtue of the plain and simple language employed in s. 51A and 51A(1)(c) enumerating the subject matter of pre-trial disclosure to the accused prior to commencement of trial, would necessarily include facts, as the wording appears, which could be utilised by the accused to refute, negate and defend himself against the preferred charges by prosecution. To enable pre-trial

A disclosure of the written statement of facts favourable to the defence of the accused at the earliest opportunity, as alluded to above, would protect his right to fair trial, portending open justice as well as conforming with the entrenched principle of equality of arms. With the favourable facts delivered prior to the commencement of trial, he would be able to:

B (i) avail himself with an avenue to implore the PP *vide* a letter of representation to exercise his prosecutorial discretion under art. 145(3) of the FC, to have the preferred charges against him discontinued, if it does not ultimately disclose the alleged offences.

C (ii) if that does not take place, for him to utilise the favourable facts to advance his defence in court during his trial. This would disable the prosecution from faulting him for belated disclosure or advancing an afterthought defence, which is a defence smacks of a recent invention on his part. It is a defence that was never revealed during investigation, nor confronted to the relevant prosecution witnesses during their cross-examination in the prosecution stage. Such being its nature, it is quite incapable, or difficulty of belief. Indeed, it arouses suspicion as to its veracity, as decided by His Lordship Abang Iskandar JCA (now PCA) in the case of *Muhammad Faizal Dzulkifli v. PP* [2017] 3 CLJ 424; [2017] 2 MLJ 228).

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E (iii) to utilise the favourable facts to cross-examine the prosecution witnesses who would be testifying against him in order to prove the preferred charges.

(iv) utilised to rebut the presumption of law, once invoked pursuant to s. 50(1) of the MACC Act, which would burden the accused on a balance of probabilities for him to afford an innocent explanation that the gratification allegedly received by him was not with a corrupt intent. (See: *Thavanathan Balasubramaniam v. PP* [1997] 3 CLJ 150; [1997] 2 MLJ 401).

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G (v) thus, with the favourable facts delivered to him opportunely, he would be entitled in law to defend himself to the preferred charges adequately in order to gain an acquittal. The trial court would be in an exalted and advantageous position to understand and appreciate the case against the accused in its entirety, in order for it to arrive at a fair, just and appropriate decision on the guilt of the accused during the trial.

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**[41]** Entitlement of the accused to the favourable facts, as essayed by him in his cautioned statements to exculpate criminal liability, is fortified by s. 53(3) of the MACC Act stating:

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> Where any person is arrested or is informed that he may be prosecuted for any offence under this Act, he shall be served with a notice in writing, which shall be explained to him, to the following effect:

> You have been arrested/informed that you may be prosecuted for … (the possible offence under this Act). Do you wish to say anything? *If there is any fact on which you intend to rely in your defence in court, you are advised to mention it now. If you hold it back till you do to court, your evidence may be less likely to be believed and this may have a bad effect on your case in general.* If you wish to mention any fact now, and would like it written down, this will be done.
>
> (emphasis added)

The net effect of him not mentioning at the earliest instance of his defence with which he wishes to rely on in court, is provided for in s. 53(6) and (7) of the MACC Act, which states positively:

> (6) Where in any criminal proceedings against a person for an offence under this Act, evidence is given that the accused, on being informed that he might be prosecuted for it, failed to mention any such fact, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention when so informed, the court, in determining whether the prosecution has made out a *prima facie* case against the accused and in determining whether the accused is guilty of the offence charged, **may draw such inferences** from the failure as appear proper; and the failure may, on the basis of those inferences, be treated as, or as capable of amounting to, corroboration of any evidence given against the accused in relation to which the failure is material.
>
> (7) Nothing in subsection (6) shall in any criminal proceedings:
>
> (a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his presence relating to the conduct in respect of which he is charged, in so far as evidence thereof would be admissible apart from that subsection; or
>
> (b) be taken to preclude the drawing of any inference from any such silence or other reaction of the accused which could be drawn apart from that subsection.

(i) the exculpatory contents of cautioned statements of the accused are within the knowledge of the respondent, amounting to facts favouring his defence against the accusations of corruption levelled against him in the preferred charges. To now say "Tiada yang diketahui", is unwarranted.

(ii) a further fortification in law, which syncs with the supply of favourable facts to the accused pre-trial, is found in s. 62 of the MACC Act, which reads:

> Once delivery of documents by the prosecution pursuant to section 51A of the Criminal Procedure Code has taken place, the accused shall, before commencement of the trial, deliver the following documents to the prosecution:

A (a) a defence statement setting out in general terms the nature of the defence and the matters on which the accused takes issue with the prosecution, with reasons; and

(b) a copy of any document which would be tendered as part of the evidence for the defence.

B **[42]** Therefore, for an offence of corruption, like the present, statement of favourable facts if delivered, would automatically assist the accused to comply with s. 62 of the MACC Act in order for him to provide an early disclosure of his line of defence to the prosecution before the commencement of trial so as not to be faulted for belated disclosure of his defence, rendering C it to be an afterthought or a recent invention.

**Recap**

**[43]** Therefore, in terms of relevance and necessity of the favourable facts to the accused, for him to put across his defence during the prosecution stage D of his case, so as not to be faulted for belated disclosure and advancing an afterthought defence, the parameters of s. 51A of the CPC has to be viewed strictly when interpreting and applying it to the circumstance of the present case. As opined above, the favourable facts are relevant, necessary and desirable to assist the accused on the following:

E (i) to prepare his defence adequately and advance it during the trial, if it progresses.

(ii) for him to negate or refute the preferred charges.

(iii) to prove his innocence at the trial.

F (iv) the exculpatory statements made by him and supplied to him pre-trial would prove early disclosure of his defence to the respondent, in sync with s. 53(3) of the MACC Act, thus to avoid any adverse inference drawn against him.

(v) the time as to when a statement was taken from DSHZ would also be G useful for him to demonstrate to the court that charges were preferred against him before the said statement was taken, which seems crucial as reference to DSHZ is the core to the accusations made against him, that the alleged gratification sum paid to him was purportedly solicited and received by the accused as an inducement for DSHZ to assist Asia H Coding Sdn Bhd to obtain any project from the agencies under the aegis of the Ministry of Home Affairs, in which DSHZ was the Minister at the material time.

**Findings**

I **[44]** Surveying the law applicable to the accused, *to wit* s. 51A(1)(c) of the CPC, he is placed in a favourable position on the following basis:

(i) the preferred charges against him form the foundation of the case of the prosecution.

(ii) the said charges, specifically refer to DSHZ. Before the preferred charges are arraigned, as required under the law, he has rendered his statement constituting exculpatory explanation on the accusations of corruption made against him.

(iii) if he does not do so and only raised at his trial, his defence and explanation would be labelled as belated disclosure and further characterised as an afterthought or a recent invention made up to negate the preferred charges. If he renders his explanation and his line of defence early, as he has done *via* his cautioned statements, and the same explanation forms part of his defence in court, he would in law be considered as being consistent in his defence, and probably subject to evaluation by the court, the result may be an acquittal. His exculpatory statements to the MACC would form his line of defence on the preferred charges.

(iv) further, if he decides to exercise his right to remain silent, but afterwards chooses to state his defence in court, his silence would also be treated as or as capable of amounting to corroboration of any evidence given against him in relation to which the failure to make a statement is material.

(v) what he declares in his statement to the MACC at the point of investigation and statement taking, would form part and parcel of his line of defence for the preferred charges against him, pursuant to s. 62 of the MACC Act.

(vi) therefore, in law, he shall not keep it to himself but to declare it to the MACC at the earliest opportunity before the commencement of the trial.

(vii) as deposed by the applicant in his affidavit in support (AIS) to his application to this court, he has explained clearly the issues relating to the allegations of corruption against him on the legitimate reasons as to why the said RM15 million was being paid to him and also why part of the sum was repaid by him to one Syed Abu Zafran bin Syed Ahmad.

(viii) existence of the exculpatory statements are not denied by the respondent, as in its affidavit in reply (AIR) at para. 17, it was confirmed that the applicant had given to the MACC such statements at the very first available opportunity when he was questioned on the accusations of corruption against him.

(ix) that line of defence would in fact form statement of favourable facts to his benefit and ought to be disclosed to him before the commencement of the trial. There is no opinion to be rendered by the respondent when disclosing it, but only the contents of the exculpatory statements, which are inextricably linked to the preferred charges, as the exculpatory statements made are never independent of the accusations made against him.

(x) on that plank, he ought to be supplied with the statement of favourable facts, before the commencement of the trial pursuant to s. 51A(1)(c) of the CPC.

(xi) together with that statement of favourable facts encompassing his exculpatory statements to the MACC, he is also entitled to know when DSHZ gave his statement to the MACC, as the nexus between the accused and DSHZ does not arise willy-nilly but expressly referred to in the preferred charges against him, also forming part and parcel of the offences of corruption levelled against him.

(xii) hence, the necessity for it to be disclosed before the commencement of the trial pursuant to s. 51A(1)(c) of the CPC, as part of the statement of favourable facts.

(xiii) the impediment found in s. 51A(2) of the CPC does not apply, as the pre-trial disclosure does not run contrary to public interest, for the respondent to disclose what is requested by the accused, for the following reasons:

(a) the law allows it.

(b) it is his entitlement under the law.

(c) together with his line of defence explained at the point of his arrest and statement taking, he must be supplying the same to the MACC pursuant to s. 62 of the MACC Act.

(d) he is not entitled to know the content of the statement given to the MACC by DSHZ, but he wishes to know only when the statement was taken, was it before or after he was charged in court, as the object for which he is alleged to have received corrupt gratification is in reference to the public officer DSHZ, which definitely form part of the favourable facts supporting his defence during the trial.

**[45]** The law operates for the accused with a semblance of consistency from the point of arrest, investigation and trial. The respondent ought to be also consistent and comply with demands of the law appropriately, as what is sauce for the goose is also sauce for the gander, suggesting that what the

respondent has in its arsenal, shall be disclosed to the accused, within the parameters of the law allowing pre-trial disclosure. The respondent ought to comply with s. 51A(1)(c) of the CPC, when it has the exculpatory statements of the accused, by either listing out the exculpation or referring to it wholesome and not to merely say "tiada yang diketahui". Compliance with the law, is mandatory, as it is penal law which affects the liberty of the accused, and will be always interpreted in his favour because of the cardinal principle in criminal law that an accused person is presumed innocent and that it is the duty of the prosecution to prove his guilt, and any ambiguity must be resolved in favour of the liberty of the accused. (See: *PP v. Sihabduin Hj Salleh & Anor* [1981] CLJ 39; [1981] CLJ (Rep) 82; [1980] 2 MLJ 273).

*Decision*

**[46]** Ensuing from the above reasoning, when this matter came up for decision after full arguments on the matter was advanced, I had delivered my brief grounds of judgment as follows:

After having perused the criminal application by the accused in its entirety, supported by the affidavit in support (AIS) of the accused as well as affidavit in reply (AIR) by the prosecution as the respondent, and the submission rendered to this court both written and oral in precedence of time, the following are the brief grounds of judgment of this court:

(i) charges against the accused are for four corruption offences pursuant to s. 16(a)(B) punishable under s. 24(1) of the MACC Act 2009 (Act 694).

(ii) stage of trial – still at pre-trial disclosure stage.

(iii) application by the accused is for a more detailed favourable facts favouring the accused pursuant to s. 51A(1)(c) of the CPC.

(iv) decision was by the SCJ, who had dismissed the application on 27 September 2023.

(v) no appeal by the accused, as the impugned decision is not appealable.

(vi) hence, the application to have the impugned decision revised by this court.

(vii) surveying the jurisprudence on the exercise of revisionary jurisdiction by this court, the doors are not closed as to the mode and manner by which application for revision may be made.

(viii) it is anchored on s. 323 of the CPC read together with s. 325 of the CPC.

(ix) decision made by SCJ hinges on s. 51A(1)(c) of the CPC.

(x) the pivotal issue in the matter is, were there favourable facts to be disclosed by the prosecution to the accused before trial consonant with the intent and spirit of s. 51A which caters for pre-trial disclosure so that the accused is on equal arms with the prosecution to fight his battle and advance his defence in order to secure an acquittal at the trial court.

(xi) apparently, there are favourable facts in the form of exculpatory contents in the cautioned statement supplied to the accused, which were recorded by the MACC on 16 February 2023 and 28 February 2023.

(xii) it is by its very nature exculpatory as it was made by the accused at the earliest opportunity after arrest, thus negating belated disclosure; it is a contemporaneous piece of evidence favouring the accused in which he has laid his foundation for his defence on the charges preferred against him.

(xiii) such early disclosure is warranted so as not to prejudice the accused of his right to a fair trial; right to defend himself at all costs who is facing serious charges of corruption.

(xiv) it ties up with the *corpus* of law relating to corruption, *vis* s. 62 of the MACC Act.

(xv) likewise, the disclosure of favourable facts does not prejudice the prosecution in any way as the content of the cautioned statements by the accused person is already known by both the accused and prosecution and is already the accused's line of defence.

(xvi) alongside would be the time of recording of the statement of the witness, without disclosing its content. It does not offend public interest, in that the witness concerned is also a material witness for the prosecution who would in all probability testify against the accused person. This could be discerned from the charges preferred against the accused wherein the name of that witness, DSHZ, is expressly mentioned.

(xvii) by merely stating in the written statement supplied "tiada yang diketahui" would not sync with s. 51A(1)(c) of the CPC and any further disclosure would not offend public interest pursuant to s. 51A(2) of the CPC.

(xviii) as the law does not forbid, the accused person's espousal of his claim for favourable facts cannot be denied so as to guarantee fair trial as well as he would be forearmed with his defence to the charges against him, which ranges from the mode and manner by which the prosecution has preferred the charges against him to the subject matter

of the charge touching on the ingredients of the offence. The plea made for disclosure of favourable facts is not separate and distinct from the charges preferred against him by the prosecution but inextricably connected to it.

To that extent, the application made by the accused is justified in law pursuant to s. 51A(1)(c) of the CPC. The impugned decision of the SCJ is incorrect in law as the intent and purport of s. 51A(1)(c) of the CPC, which favours the accused on all fours, is not fully appreciated and applied. The circumstance of the case of the accused, pursuant to the charges preferred, is also not fully considered before disallowing the application by the accused. Moreover, the judgment was without reasons, thus lacks basis.

Allowing the accused the favourable facts does not at all impinge on the prosecutorial discretion by the Public Prosecutor; it does not at all forbid the investigative powers of the MACC as it is not curtailed until completion of the trial, as exigencies may arise which may warrant and justify further investigation.

On that score, the accused has suffered injustice in the eyes of the law, which ought to be corrected by this court, exercising its supervisory jurisdiction, which is to observe and ensure the law as in s. 51A(1)(c) of the CPC is correctly applied.

With that, this court allows the application for revision by the accused and allows order in terms of encl. 1 *vis* prayers 1.1, 1.2(i), (ii)(a), (b) with qualification and (iii).

The qualification is that the respondent is allowed 14 days for compliance of the order by this court.

And as for prayer 1.2 (ii)(b), is allowed to the extent of disclosure only of the exculpatory statements contained in both the cautioned statements rendered by the accused to the MACC and not to the extent which did not support any ingredient of the offence as alleged in each and every corruption charge preferred against the accused, as prayed for in the application, since that would be for the accused to advance his defence, denial and explanation during the trial *via* cross-examination of prosecution witnesses and his defence, if ordered so by the trial court.

Prayer in para. 1.3 is otiose as the trial has not commenced at the Sessions Court.

**Conclusion**

**[47]** In sum total, in the present case, the respondent ought to have complied with the law as rendered by s. 51A(1)(c) of the CPC to deliver to the accused before the commencement of trial the requisite written statement of favourable facts as specified by the law. Delivery of the said statement

A does not run contrary to public interest, as the request for favourable facts are in relation to the preferred charges against the accused and not outside its orbit. The request for favourable facts is related to and connected with the subject matter of the preferred charges and trial, which is underway. It has the effect of throwing some light on the proceeding and forming a nexus to
B the chain of evidence. In the end, the accused in a criminal trial should have sufficient notice of what is alleged against him so as to enable him to prepare his defence.

**[48]** If an application under s. 51 of the CPC would be able to contain such a request, what more if it is mandated by the law pursuant to s. 51A of the
C CPC. (See: *Raymond Chia v. PP*). Moreover, the exception in s. 51A(2) of the CPC does not apply to the present case. The accused is not seeking out for the out-of-court statement of DSHZ but only the time at which it was taken, as the object of gratification allegedly received by the accused specifies reference to him, so if he is charged in court in the morning part of the day,
D there is nothing against public interest to reveal to the accused if the statement of DSHZ was in fact recorded simultaneously or only in the evening as alleged by the accused. It ought not be the concern of the respondent that it is a matter to be deliberated at the trial proper and not at this stage of the case. It cannot be so, as once the information which is a
E favourable fact to the accused hinging on the prosecutorial discretion of the respondent who has instituted prosecution against him is delivered, he would be armed with it to cross-examine prosecution witnesses on that issue, maybe the investigation officer of the case and it would have a direct bearing on the preferred charges. Therefore, the argument canvassed by the respondent that the delivery of such information to the accused would be premature, as it
F would be unearthed during the trial is a misconception, as the law pursuant to s. 51A of the CPC demands for disclosure pre-trial and not during trial. Further, it has to be emphasised that the issue is not on pursuance of investigation after a charge has been preferred against the accused, which is already settled law as decided by case authorities like *Ng Yiu Kwok & Ors*
G *v. PP* [1989] CLJU 52; [1989] 1 LNS 52; [1989] 3 MLJ 166; *PP v. Dato' Seri Anwar Ibrahim (No 3)* [1999] 2 CLJ 215; [1999] 2 MLJ 1 at p. 68.

**[49]** Likewise, would also be the position for the content of the exculpatory statement made by the accused to be revealed as part of the written statement of favourable facts and delivered to the accused. It is non-issue if the
H respondent has to render an opinion on it. The law only requires a written statement of favourable facts which would assist the accused in his defence during the trial. It could also be a reference to the contents of the cautioned statements recorded from the accused which are exculpatory advanced by him during the investigation phase of the case *to wit* when the cautioned
I statements were recorded from him. In that context, it is never an opinion

by the respondent but only a written statement of favourable facts containing contents of the exculpatory statements made by the accused which has got a causal link and nexus with the preferred charges against him. This revelation is nothing new or sinister but fortified by legal pronouncements by the Court of Appeal in the case of *Prasit Punyang v. PP* [2014] 7 CLJ 392; [2014] 4 MLJ 282, where His Lordship Azahar Mohamed JCA (as he then was, later CJM) had decided on the importance of cautioned statement made by the accused at a very early stage of the investigation during the trial of his case in the following manner:

> The appellants cautioned statement was recorded a day after the arrest of the appellant. It is important, therefore, to point out that the appellant had mentioned the basic facts of his defence at a very early stage of the police investigation against him. It follows from this that the defence of the appellant in the present case was not something that was sprung for the first time in the defence case (see *Public Prosecutor v. Lin Lian Chen* [1992] 2 MLJ 561). The impact of the totality of the cautioned statement on the prosecution case or innocence of the appellant has to be kept in mind in coming to the conclusion as to the guilt of the appellant …

Again, His Lordship in another case, *Ghasem Gharezadehsharbiani Hassan v. PP* [2014] CLJU 752; [2014] 1 LNS 752; [2014] MLRAU 256 had decided:

> … the important point to make is this. In the cautioned statement, which was recorded on 10 November 2010, the appellant denied any knowledge of the presence of drugs inside the bag and he gave an explanation as to why he had no such knowledge. The contents of the cautioned statement represented the early disclosure of the defence of the appellant. The cautioned statement was given about three days after the appellant was arrested, Indeed, he had stated his version of events at a very early stage of the investigation against him. The contents of the cautioned statement were consistent with his oral evidence in Court; hence the defence of the appellant was not something that was sprung for the first time in the defence case. (see: *PP v. Lin Lian Chen* [1992] 2 MLJ 561).

**[50]** This court had ordered for the written statement of favourable facts to be delivered to the accused as per his request, which is not strange or new to the respondent but in its possession, thus it shall not be "tiada yang diketahui". The non-compliance and non-delivery of the statement of favourable facts has occasioned miscarriage or failure of justice to the accused, as he is prejudiced even before his trial commences, when the law that allows him pre-trial disclosure of such statement is not complied with promptly, causing him to seek redress from the court. At this juncture, it would be appropriate to again refer to the case of *Lee Kwan Woh v. PP*, in which the apex court had quoted a passage from the judgment of Wilfred Kelsham Fullagar J in the Australian case of *Mraz v. The Queen* [1955] 93 CLR 493, which at p. 649 renders the following:

A … every accused person is entitled to a trial in which the relevant law is correctly explained … and the **rules of procedure and evidence are strictly followed,** if there is any failure in any of these respects, and the appellant may thereby lost a chance which was fairly open to him of being acquitted, there is, in the eye of the law, a miscarriage of justice. **Justice has miscarried in such cases, because the appellant has not had what the law**
B **says he shall have, and justice is justice according to law.**

(emphasis added)

**[51]** So, would be the position in the present case, wherein the accused who is entitled in law to the written statement of favourable facts is not allowed to have it and has to seek an order of this court for the said statement to be
C delivered to him. His redress was on the basis, miscarriage of justice has occasioned on him and he has been prejudiced even before his trial has commenced. This court opines his belief and position taken is rightly so, simply because the law which is applicable to him *to wit* s. 51A(1)(c) is not complied with, when the respondent knew from the point of inception, they
D had the facts which are favourable to the accused. Procedural fairness according to the law was not meted out to the accused even before the commencement of trial. (See: *Md Desa Hashim v. PP* [1995] 4 CLJ 677). Exactly, on all fours, the refusal by the SCJ is revised, reversed and substituted with an order of delivery of the said written statement of
E favourable facts, made pursuant to s. 316(c) of the CPC (see also s. 325(1) of the CPC).

**[52]** It has to be emphasised, in the end, the paramount duty of ensuring a fair trial, open justice, equality of arms, the accused to be supplied with facts and information as he is entitled in law culminating into adequate
F prosecutorial disclosure, falls on the court. Thus, this court has invoked its supervisory jurisdiction to prevent non-compliance with the law and injustice. Hence, the granting of order in terms of the application by the accused.

Application for criminal revision allowed. Respondent ordered to comply
G with s. 51A(1)(c) of the CPC.

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